

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRAVIS RAY THOMPSON,
Plaintiff,
v.
K. ALLISON, et al.,
Defendants.

Case No. 1:21-cv-00001-JLT (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO EXHAUST**

21-DAY DEADLINE

Travis Ray Thompson is incarcerated at Kern Valley State Prison. (Doc. 1 at 13.) He alleges that prison staff were deliberately indifferent to his health, causing him to contract COVID-19 on December 7, 2020. (*See id.* at 17-19.) Plaintiff has been “le[d] ... to believe” that correctional officers either “deliberately contaminated his food ... or solicited medical personnel to present a false positive in retaliation for litigation.” (*Id.* at 17-18) Plaintiff admits that he failed to exhaust administrative remedies prior to filing suit. (*Id.* at 6-7.)

The Prison Litigation Reform Act provides that “[n]o action shall be brought with respect to prison conditions under ... any other Federal law ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies is mandatory and “unexhausted claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (citation omitted). The exhaustion requirement applies to all inmate suits relating to prison life, *Porter v. Nussle*, 534

1 U.S. 516, 532 (2002), regardless of the relief sought by the prisoner or offered by the
2 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Inmates are required to
3 “complete the administrative review process in accordance with the applicable procedural rules,
4 including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548
5 U.S. 81, 88, 93 (2006). Generally, failure to exhaust is an affirmative defense that the defendant
6 must plead and prove. *Jones*, 549 U.S. at 204, 216. However, courts may dismiss a claim if
7 failure to exhaust is clear on the face of the complaint. *See Albino v. Baca*, 747 F.3d 1162, 1166
8 (9th Cir. 2014).

9 It is clear on the face of his complaint that Plaintiff failed to exhaust administrative
10 remedies prior to filing suit. Accordingly, the Court ORDERS Plaintiff, **within 21 days** of the
11 date of service of this order, to show cause in writing why this action should not be dismissed for
12 his failure to exhaust. Alternatively, Plaintiff may file a notice of voluntary dismissal.

13
14 IT IS SO ORDERED.

15 Dated: **January 5, 2021**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE